

5. Under Paragraph 2, the Security Agreement secures all “indebtedness” of Defendant to Plaintiff, which includes the Loan Agreement and Leasing Note.

6. Plaintiff’s Complaint is seeking to obtain interim remedies such as injunctive relief and the appointment of a receiver, and, in fact, Plaintiff has been heard by this Court on its Motion for Temporary Restraining Order, Motion for Preliminary Injunction, and Motion for Appointment for a Receivership.

7. Accordingly, this Court has jurisdiction over Plaintiff’s Motion for Temporary Restraining Order, Motion for Preliminary Injunction, and Motion for Appointment of a Receiver.

8. Further, Count II of Plaintiff’s Verified Complaint alleges a breach of the Leasing Note attached as Exhibit 5 to Plaintiff’s Verified Complaint (“Leasing Note”).

9. The Leasing Note does not contain an arbitration clause and is therefore not subject to arbitration.

10. Accordingly, this Court has jurisdiction over Count II of Plaintiff’s Verified Complaint.

WHEREFORE, Plaintiff, Bank of America, N.A., prays this Court deny Defendant Magruder Construction Co., Inc.’s Motion to Dismiss Plaintiff’s Verified Complaint and grant such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

LATHROP & GAGE LLP

By: /s/ Michael A. Clithero
Michael A. Clithero #31402MO
Alicia M. Kerr, #63931MO
Pierre Laclede Center
7701 Forsyth Boulevard, Suite 500
Clayton, Missouri 63105
Telephone: (314) 613-2800
Telecopier: (314) 613-2801
mclithero@lathropgage.com
akerr@lathropgage.com

**Attorneys for Plaintiff Bank of
America, N.A.**

CERTIFICATE OF SERVICE

I hereby that on this 4th day of June, 2014, the above and foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and notification of such filing was sent via the Court's CM/ECF system.

/s/ Michael A. Clithero